THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 604(h)

No. _____

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS Plaintiff-Petitioner, v. SEAN P. GRAYSON, Defendant-Respondent.	))))))))))	On Petition for Leave to Appeal from the Appellate Court of Illinois, Fourth District No. 4-24-1100 There heard on Appeal from the Circuit Court of Sangamon County No. 2024-CF-909 The Honorable Ryan Cadagin, Judge Presiding.

PETITION FOR LEAVE TO APPEAL

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PRAYER FOR LEAVE TO APPEAL

Under Supreme Court Rules 315, 604(a)(2), and 612(b), the People of the State of Illinois petition for leave to appeal from the judgment of the Illinois Appellate Court, Fourth District, in *People v. Grayson,* 2024 IL App (4th) 241100-U. The appellate court reversed the circuit court's order for pretrial detention under 725 ILCS 5/110-1 *et seq.* (the "Act"), upon concluding that there was insufficient evidence presented showing that no conditions of release would be adequate to mitigate the threat defendant posed to the safety of the community because certain of the circuit court's factual findings were unsupported by the evidence, and the circuit court had been wrong to "focus on defendant's failings as a law enforcement officer," which "distracted from the central question of how to address any risk he posed after being stripped of his office." *Grayson,* 2024 IL App (4th) 241100-U, ¶ 59. The appellate court thus remanded the case to the circuit court to conduct a hearing to determine the least restrictive conditions of defendant's release. *Id.* ¶ 68.

The appellate court could reverse the circuit court's detention order only by (1) failing to give the required deference to the circuit court's findings, in conflict with *People v. Mikolaitis*, 2024 IL 130693, ¶ 24 — which the appellate court failed to even cite; (2) ignoring evidence presented in the People's proffer; and (3) mischaracterizing the circuit court's reasoning, especially the circuit court's reliance on defendant's status as a law enforcement officer. This Court should therefore grant review to ensure that reviewing courts apply the appropriate deference to circuit courts' findings required by the Act and *Mikolaitis*.

STATEMENT REGARDING JUDGMENT AND REHEARING

On November 27, 2024, the appellate court issued its decision. *Grayson,* 2024 IL App (4th) 241100-U. No petition for rehearing was filed.

POINTS RELIED UPON IN SEEKING REVIEW

The appellate court erred in holding that there was insufficient evidence presented showing that no conditions of release would be adequate to mitigate the threat defendant posed to the safety of the community, as the appellate court (1) departed from this Court's recent opinion in *Mikolaitis*, which requires reviewing courts to defer to a circuit court's findings, (2) ignored evidence presented in the People's proffer, and (3) repeatedly mischaracterized the circuit court's reasoning.

STATEMENT OF FACTS

On July 17, 2024, defendant, a Sangamon County Sheriff's Deputy, was charged with three counts of first-degree murder, one count of aggravated battery with a firearm, and one count of official misconduct. C 14-19. On July 18, 2024, the People filed a verified petition to deny pretrial release pursuant to section 110-6.1 of the Act. C 21-24. The People's petition alleged that defendant was charged with a detainable offense and that his pretrial release posed a real and present threat to the safety of any person or persons or the community. C 21. The petition contained a detailed factual basis in support of pretrial detention. C 21-22. The factual basis incorporated People's Exhibit A (video footage of the shooting giving rise to the charges against defendant, as captured by the body worn camera of another deputy at the scene). C 21; SUP ES 4.[1] It also referenced People's

[1] Exhibit A also included defendant's body camera footage, cited as Exhibit A-2; references to Exhibit A-1 refer to footage from the other deputy's body worn camera.

Exhibit B, the July 15, 2024 investigative report of the Illinois State Police. C 22; SUP ES 6-14.

On July 18, 2024, the circuit court held a hearing on the People's petition. R 2-18. The People proceeded by proffer, submitting evidence that Sonya Massey called 9-1-1 to report a prowler in her neighborhood, and defendant responded to her call, along with another deputy. R 5-6; see generally Exhibit A-1. Defendant's body worn camera was turned off, and the video from the other deputy's body worn camera began with the deputies entering Massey's back yard. Exhibit A-1. After searching for several minutes without locating a prowler, the deputies knocked on Massey's door. *Id.* Massey answered several minutes later, appearing "distraught," ES 7; defendant was significantly taller and heavier than Massey, who was slightly built. Exhibit A-1. Defendant was armed with his service weapon, a 9-millimeter handgun. *Id.* When the deputies entered Massey's home, defendant explained that they had not found anyone outside, questioned Massey about a damaged car in the driveway, which Massey said was not hers, and asked whether she was "doing alright mentally." *Id.*

Although Massey was not under arrest or detained for any crime, R6, the deputies followed her into her living room, which was separated from the kitchen by a row of low cabinets. Exhibit A-1. They observed a pot of water on an open flame in the kitchen. R 6; Exhibit A-1 at 9:52–11:53. Defendant gestured toward the stove and said, "We don't need a fire while we're here." Exhibit A-1 at 11:43–11:52.

Massey walked over, turned off the burner, carried the pot to the sink, and turned on the faucet. Exhibit A-1 at 11:52–11:54. Massey then twice said, "I rebuke you in the name of Jesus." Exhibit A-1 at 12:05-12:10. In response, defendant said, "You better f*** not. I swear to God, I'll f*** shoot you right in your f*** face." Exhibit A-1 at 12:10–

12:12. Defendant then drew his service weapon and pointed it at Massey, repeatedly shouting, "Drop the f*** pot!" R 6; Exhibit A-1 at 11:52–12:12.

Massey then threw her hands in the air and ducked behind the kitchen cabinets. R 7; Exhibit A-1 at 12:12–12:23. Defendant approached Massey, yelled at her, and shot her three times. R 7; see Exhibit A-1 at 12:12–12:23. One of the shots hit her in the face, just below her left eye, and she died from that injury. R 7.[2]

Only after defendant reported the shooting to the dispatch center did he turn on his body worn camera. Exhibit A-2. The other deputy said that he was "going to get his [medical] kit," to which defendant responded, "You can go get it, but that was a headshot." Exhibit A-1 at 12:42-14:05. About a minute and 15 seconds later, defendant went to get the "med kit," saying "there's not much we can do." *Id.* The other deputy responded, "[We] can at least try and hold the — stop the blood." Exhibit A-1 at 14:05-14:10. The other deputy held Massey's head and used a kitchen towel to apply pressure to the bullet wound until EMS arrived. Exhibit A-1 at 14:25-17:00. During this time frame, defendant referred to Massey as a "f*** b***" and described her as "crazy." Exhibit A-2 at 4:45-4:50.

The ISP report recited the objective Fourth Amendment reasonableness-under-the-circumstances standard that governs claims of excessive force, ES 8-9 (citing *Graham v. Conner*, 490 U.S. 386 (1989)), and ultimately opined that although defendant had been justified in pointing his weapon at Massey to "gain compliance" with his request that she

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[2] The ISP report, which was based on the body camera footage *and* the officers' reports, ES 6, stated that after ducking behind the cabinets, Massey stood up and grabbed the pot, ES 8. As defendant continued to direct Massey to drop the pot, he approached the cabinets; Massey, while "on her knees" or "beginning to stand," "threw the steaming hot water from the pot" (which appeared to strike a chair near the cabinets), and defendant fired at Massey. ES 8-9.

set down the pot, defendant was *not* justified in shooting Massey because he had placed himself in danger of great bodily harm by advancing toward her, ES 14.

Based on the proffered evidence, the People argued that, in response to Massey's "rebuke you" statement, defendant did not simply ask her to put the pot down but swore at her, threatened to shoot her, and pointed his weapon at her. R 6. The People further argued that Massey then ducked behind the cabinets, thus separating defendant from any real or perceived threat. R 7. But instead of "utilizing that distance," defendant approached and "closed the gap" between himself and Massey, yelled at her, and fired at her three times. *Id.* Defendant instead could have used one of the less lethal options "on his duty belt," such as his Taser, but he did not. R 7. The People pointed out that the ISP report concluded that the shooting was not justified and argued that defendant had "put himself in not even harm's way," *i.e.*, that the unarmed Massey had not posed any real threat, and "then decided purposefully to utilize lethal force." R 8. These facts, the People argued, showed that defendant had "clearly disregarded his training as a law enforcement officer," and that in declining to render aid to Massey after he shot her in the head, defendant displayed "callousness towards the human life." *Id.* Accordingly, the People argued, the circuit court should grant the petition to deny pretrial release. R 9.

For the defense, counsel stipulated that defendant was charged with a detainable offense, but argued that defendant posed no threat or that if he did, that threat could be mitigated by appropriate conditions of release. R 10. Counsel provided some background information, including that defendant was 30 years old, owned the home he shared with his fiancée, had graduated from a local high school, and had served three years in the Army before starting a career in law enforcement. *Id.* Defendant served one year each at three prior law enforcement positions, and a year and a half with Sangamon County. R 10-11.

Defendant also had an ostomy bag that was scheduled to be "removed by surgery within the next couple of months." R 11. Counsel proposed that defendant be released on conditions that he not possess any weapon, not use any intoxicating or controlled substance, undergo a mental health examination, and submit to electronic monitoring. R 12.

After hearing the People's proffer and the arguments of counsel, the circuit court found that the People had met their burden of proof, granted the petition, and ordered defendant detained pending trial. C 25-26; see R 16. The circuit court found by clear and convincing evidence that the proof was evident and the presumption great that defendant committed one or more detainable offenses, that defendant posed a real and present threat to the safety of any person or persons or the community, and that no condition or combination of pretrial release conditions would mitigate that threat. C 25. The circuit court made several findings supporting its conclusion that defendant posed a threat and that no condition or combination of conditions would mitigate that threat, including written findings that:

- defendant was a trained and sworn officer responding to a call with another officer and, despite knowing that he was being recorded, defendant still discharged his firearm against Massey, an unarmed "slight woman who weighed 110 lbs and was not a physical threat to the [d]efendant";

- defendant directed the other officer "not to render aid, which is counter to basic norms of public safety";

- defendant violated his sworn oath as a peace officer, which the circuit court found to be "evidence [that] he is not a good candidate to be in compliance with his conditions";

- defendant's "characterization of [Massey] after the shooting, as contained in the video in People's Ex. A, are such a departure from the basic expectations of civil society that they are evidence of [defendant's] dangerousness and also that he could not comply with conditions"; and

- defendant did not comply with "body camera requirements" and did not turn on his camera until after the shooting, which is further evidence of his inability to comply with release conditions.

C26.

On August 8, 2024, defendant filed a motion for relief from the circuit court's order denying pretrial release. C 45-50. Defendant did not contest the circuit court's findings that he was charged with a detainable offense; that the proof was evident or the presumption great that he committed the offenses; or that he posed a real and present threat to safety. *Id.* Rather, defendant argued that the People had failed to present clear and convincing evidence that proposed release conditions, including home confinement with GPS monitoring and removing firearms from defendant's home, would be insufficient to mitigate any threat that he posed. C 46-48. Defendant argued that the People had "relied almost exclusively on its factual proffer concerning the elements of the allegations," which, he claimed, "did nothing to establish that no combination of conditions could mitigate the threat." R 46. Defendant urged that various factors, including those outlined during the detention hearing, dispelled "the State's speculative belief that [d]efendant would not be compliant with pretrial release conditions" and thus militated in favor of granting pretrial release. C 48-50. On August 9, 2024, the People filed a written response to defendant's motion, C 83-96, which included evidence of defendant's two prior DUIs in Macoupin County, C 87. The People's response argued, among other things, that no conditions could mitigate the threat defendant posed, and that defendant failed to sufficiently demonstrate he surrendered all his firearms or that he no longer had access to any firearms. C. 87-92.

That same day, the circuit court held a hearing on defendant's motion. R 19-40. Consistent with his arguments at the detention hearing and in his motion for relief, defendant argued that there existed sufficient conditions to mitigate his risk and deny pretrial detention. R 23; see generally R 21-26. Counsel argued that because defendant was no longer a law enforcement officer, many of the circuit court's concerns no longer applied.

R 23-24. Counsel also stressed that defendant scored a 3 out of 9 on the Virginia Pretrial Risk Assessment Instrument. R 26-30; see E 3-38.

The People responded that the mere fact that defendant was no longer a police officer did not mitigate his risk and further argued that although the Pretrial Risk Assessment was merely a tool, the result was only as good as the input, and defendant had apparently failed to report his DUIs, which would have resulted in a score of 5 (not 3). R 31-32. After hearing argument on the motion, the circuit court denied defendant's motion. C 123; see R 35. The court noted that while electronic monitoring may detect a failure to comply with conditions, "it's not adequate to mitigate the threat." R 37. Similarly, the court found, home confinement and turning in weapons are insufficient because the court "does not have confidence he could comply with conditions." R 37-38. The court reasoned that the body camera footage displayed defendant's "impulsiveness" in that it showed that only a brief amount of time passed between defendant drawing his weapon and firing it, all while being recorded by his fellow deputy. R 37. And as to the risk assessment, the court considered that defendant would have received a score of 5 had defendant's two prior DUIs been considered. R 39.

On appeal, defendant argued that the circuit court erred in finding that no condition or combination of conditions were adequate to mitigate the risk he posed. *Grayson,* 2024 IL App (4th) 241100-U, ¶ 43. The appellate court agreed, finding that certain of the circuit court's factual findings were not supported by the record, and that the circuit court had been wrong to "focus on defendant's failings as a law enforcement officer," which "distracted from the central question of how to address any risk he posed after being stripped of his office." *Id.* ¶ 59. The appellate court reasoned that "[w]hen the question before the court is whether defendant can be safely released prior to trial on appropriate

conditions, it is inappropriate to dwell on whether he fell short of the high expectations society rightly has for its law enforcement officers." *Id.* As a remedy, the appellate court reversed and remanded to the circuit court for a hearing to determine the least restrictive conditions of defendant's pretrial release.[3] *Id.* ¶ 68.

ARGUMENT

I. The People Presented Sufficient Evidence to Support the Circuit Court's Order Denying Pretrial Release.

As this Court recently reiterated in *People v. Mikolaitis*, 2024 IL 130693, to prevail on their petition to deny pretrial release, the People were required to prove by clear and convincing evidence that (1) "the proof is evident or presumption great that the defendant committed a detainable offense"; (2) "defendant poses a real and present threat to the safety of any person, persons, or the community, based on the specific, articulable facts of the case"; and (3) "no condition or combination of conditions" can mitigate defendant's threat to the safety of any person or persons or the community, "based on the specific articulable facts of the case." *Id.* ¶ 16.

At issue here is the third element. *Mikolaitis* rejected the argument raised in defendant's motion for relief, R 46, that it does not suffice for the People to present evidence of the nature and circumstances of the offense. The Court held that, while 725 ILCS 110-6.1(e)(3) "places the burden of proof on the State, the State's burden of proof does not require it to specifically address every conceivable condition or combination of conditions and argue why each condition does not apply." *Mikolaitis*, 2024 IL 130693, ¶

[3] The appellate court also held that the circuit court failed to explain its reasoning for sealing materials from public view, and on remand the circuit court "must revisit whether the party or parties seeking to seal these documents have met the heavy burden necessary to warrant the continued restriction on public access[.]" *Grayson,* 2024 IL App (4th) 241100-U, ¶ 64. The State does not seek leave to appeal this section of the order.

20. This is so because the statute includes no "language requiring argument as to specific matters or language dictating what evidence or argument the State must present in attempting to meet its burden." *Id.* "Rather, the State must meet its burden and present sufficient evidence regarding the specific scenario presented by each case, such as the nature and circumstance of the offense, the defendant's criminal history, the defendant's risk assessment score, and other considerations known to the State at the time of the hearing [citations], that allows the circuit court to determine whether pretrial release is appropriate." *Id.*; see also *id.* ¶ 21.

Not only did *Mikolaitis* hold that the State need not present evidence on every conceivable condition of release, but it stressed that deference is owed to circuit court findings supporting pretrial detention orders, concluding that, "[u]ltimately, it is up to the circuit court to review the evidence presented and determine whether conditions of release would mitigate the safety threat posed by a defendant." *Id.* ¶ 24. Accordingly, the Court found no error in the detention order where the circuit court "heard all the evidence and determined that, because defendant failed to comply with his doctor's directives to take his prescribed medication, he would not comply with conditions of release." *Id.*

In this case, the appellate court erred in holding that the circuit court abused its discretion in entering an order denying defendant pretrial release, for it cannot be said that the circuit court's decision was arbitrary or fanciful or so unreasonable that no reasonable person could agree with it. See *People v. Kladis*, 2011 IL 110920, ¶ 23 (defining abuse of discretion standard of review). To the contrary, the record here sufficed to show that no condition or combination of conditions could mitigate defendant's risk. The People presented the body camera footage of the shooting, which showed that after failing to locate the reported prowler, the deputies knocked on Massey's door. Exhibit A-1 at 0:00-3:33.

Massey answered several minutes later, appearing "distraught," ES 7; Exhibit A-1 at 7:20-7:35. Before the deputies entered Massey's home, defendant explained that they had not found anyone outside, questioned Massey about a damaged car in her driveway, and asked whether she was "doing alright mentally." Exhibit A-1 at 8:00-8:50. The deputies followed her into the living room, which was separated from the kitchen by a row of low cabinets. Exhibit A-1 at 9:50-10:30. They observed a pot of water on an open flame in the kitchen, R 6; Exhibit A-1 at 11:40–11:50, and defendant gestured toward the stove and said, "We don't need a fire while we're here," Exhibit A-1 at 11:43–11:52.

Massey turned off the burner and carried the pot to the sink. Exhibit A-1 at 11:53-11:55. Massey then twice said, "I rebuke you in the name of Jesus." Exhibit A-1 at 12:05-12:10. In response, defendant shouted obscenities at Massey, threatened to shoot her in the face, and drew his service weapon and pointed it at her while repeatedly shouting, "Drop the f*** pot!" R 6; Exhibit A-1 at 11:52–12:12. Massey then threw her hands in the air and ducked behind the kitchen cabinets. R 7; Exhibit A-1 at 12:12–12:23. Despite Massey's retreat behind the cabinets, and rather than responding with less than lethal force, such as his Taser, defendant approached Massey, yelled at her, and shot her three times. R 7; see Exhibit A-1 at 12:12–12:23. One of the shots hit her just below her left eye, causing her death. R 7.

Only after defendant reported the shooting to dispatch did he turn on his body worn camera. Exhibit A-2. And not only did defendant not render aid to Massey, but he also made remarks suggesting that the other deputy also should not bother doing so, telling him that he could go get his medical kit, "but that was a headshot," "there's nothing we can do," and "there's not much we can do." Exhibit A-1 at 12:42-14:05. As the other deputy used a kitchen towel to stanch the blood flow until EMS arrived, defendant referred to

Massey as a "f*** b***" and described her as "crazy." Exhibit A-1 at 14:25-17:00; Exhibit A-2 at 4:45-4:50.

The People's evidence also included the ISP report which concluded that defendant was not justified in shooting Massey because he had placed himself in danger of great bodily harm by advancing toward Massey. ES 14.

Based on all the evidence, the circuit court could reasonably conclude that given defendant's actions and the impulsivity displayed in the body camera video, no condition or combination of conditions could mitigate defendant's risk because the evidence demonstrated that defendant was unlikely to comply with any condition of release. That is, the circuit court could reasonably conclude that defendant was unlikely to comply with any conditions of release where the evidence showed that defendant was a trained and sworn officer who, despite knowing that his actions were being recorded, discharged his firearm against the unarmed Massey, a "slight woman who weighed 110 lbs and was not a physical threat to the [d]efendant." C 26. The circuit court could also reasonably conclude that someone who would direct another person "not to render aid" to a bleeding gunshot victim, *id.*, was unlikely to comply with any conditions of release. Similarly, defendant's conduct was inconsistent with the expectations of civil society, not just that of a law enforcement officer, and his characterization of Massey after the shooting as a "crazy" "b***," as well as his failure to activate his body worn camera, demonstrated that defendant was unlikely to comply with any conditions of release. Thus, just as in *Mikolaitis*, the circuit court here viewed and heard all the evidence and reasonably concluded that defendant's conduct before, during, and after the shooting demonstrated that he was unlikely to comply with any conditions of release. See 2024 IL 130693, ¶ 24.

II. The Appellate Court's Contrary Findings Fail to Accord Appropriate Deference to the Circuit Court's Findings and Mischaracterize the Circuit Court's Reasoning.

The appellate court's contrary holding rests on its flawed conclusions that several of the circuit court's findings were unsupported by the evidence and its repeated mischaracterizations of the circuit court's reasoning.

To begin, the appellate court was wrong to find that there was insufficient evidence to support the circuit court's findings that defendant was a trained officer who violated his training, that defendant had directed the other deputy not to provide aid, or that defendant was acting under the supervision of the other deputy. See *Grayson*, 2024 IL App (4th) 241100-U ¶ 47 (training), ¶ 51 (aid), and ¶ 55 (supervision). Although the People did not present evidence detailing defendant's training, defendant cannot dispute that the evidence showed that (1) he had been a police officer for over four years; (2) his duties included investigating reports of criminal activity; (3) on the day in question, he was investigating a report of criminal activity; and (4) he carried his service weapon while responding to Massey's call. Given that defendant is a police officer whose responsibilities include responding to reports of criminal activity while armed with a service weapon, the circuit court's belief that defendant had been "trained" for these duties is a reasonable inference from the evidence based on common knowledge and common sense and did not require the prosecution to introduce testimony about defendant's training. See generally *Manson v. Brathwaite*, 432 U.S. 98, 115 (1977) (holding that when judging the reliability of an eyewitness identification, a "trained police officer" can be "expected" to "pay scrupulous attention to detail" when he witnesses a crime, but not requiring evidence of officer's training); *United States v. Caldwell*, No. 95-1003, 1996 U.S. App. LEXIS 8431, *10-11 (10th Cir. Apr. 17, 1996) (applying *Manson* presumption because "although not

specifically stated in the record, it is apparent that [eyewitness] 'was a trained police officer'").

Again, none of these cases requires the prosecution to introduce evidence about an officer's training. Rather, they are based on reasonable inferences and common knowledge. In this case, the People presented evidence that defendant put himself in harm's way and then acted impulsively by firing at Massey rather than utilizing an available non-lethal form of force (such as his Taser), which the People argued was inconsistent with the actions of a trained officer. The circuit court's finding to that effect was reasonable.

The appellate court was also wrong to conclude that the People had presented insufficient evidence that defendant had declined to provide aid to Massey, for to reach that conclusion, the court would have had to ignore the ample evidence in the People's proffer, such as defendant's statements and actions in the body camera footage, which showed that not only did defendant decline to render aid to Massey, but that he made remarks suggesting that the other deputy should not bother doing so, telling him that he could go get his medical kit, "but that was a headshot" and that "there's not much we can do." Additionally, as the other deputy used a kitchen towel to stanch the blood flow until EMS arrived, defendant referred to Massey as a "f*** b***" and described her as "crazy."

The appellate court's finding that there was insufficient evidence that defendant was acting under the supervision of the other deputy flatly mischaracterizes the circuit court's finding. The circuit court did not find that the other deputy had acted in any supervisory capacity, but instead that, knowing that the other deputy's body worn camera was capturing his actions, defendant nonetheless exhibited impulsivity when shooting the unarmed Massey in the head. That finding is amply supported by the body camera footage included in the People's proffer. The circuit court could reasonably decline to credit the

deputies' statements (which were before the ISP when it prepared its report) to the effect that Massey had picked up the pot and "threw the steaming hot water from" it (which appeared to strike a chair near the cabinets) before defendant fired at Massey. ES 8-9. The appellate court noted that events following defendant's threat that he would shoot Massey in the face if she did not to "drop the f*** pot" "are not entirely visible in the body camera video" and thus relied on the ISP report's description of the events immediately preceding the shooting. But given that the events were not "entirely visible on the body camera video," in presenting this alternative account, the ISP report must have relied on its only other cited source of information — the statements by defendant and the other deputy. The circuit court could reasonably decline to credit defendant's self-serving description of the shooting and, by extension, this portion of the ISP report. *E.g.*, *People v. Ryan*, 2023 IL App (2d) 220414, ¶ 13 ("the trial court was under no obligation to believe defendant's self-serving statements that were not made under oath.")

The appellate court's decision is further undermined by its repeated mischaracterization of the circuit court's reasoning, especially the circuit court's reliance on defendant's status as a law enforcement officer. For example, in finding that the circuit court erred in relying on defendant's violation of his oath, the appellate court found that this was an improper consideration because, "at the time of the hearing, defendant was no longer a law enforcement officer subject to any oath; there was no way, then, that he could violate those obligations again if released." *Grayson,* 2024 IL App (4th) 241100-U, ¶ 49. But this misdescribes the circuit court's decision; the circuit court did not find that because defendant had violated his oath once, he was likely to violate his oath again, and thus was unlikely to comply with any condition of release. Instead, the circuit court reasoned that because defendant had, by his actions, demonstrated a willingness to violate his oath and

training, he could not be trusted to abide by other rules, including any conditions of release. The appellate court's related finding that defendant's refusal to offer aid was not a proper consideration because defendant "will not be able to issue directives to other law enforcement officers or fall short in providing assistance when acting in a law enforcement role," *id.* ¶ 51, is similarly flawed: as with defendant's oath, the circuit court did not find that detention was warranted because defendant would, in the future, refuse to offer aid or direct other offers not to do so; the circuit court found that this conduct was part of the proof that defendant's actions showed that he was unlikely to comply with any conditions of release.

The appellate court's further finding that the circuit court was wrong to conclude from defendant's failure to turn on his body worn camera that he would also fail to turn on any electronic monitoring device, *id.* ¶ 53, likewise mischaracterizes the circuit court's reasoning. The circuit court drew no such inference or conclusion; rather, the court found that the fact that defendant did not turn on his body worn camera until after he shot Massey demonstrated his failure to comply with body camera regulations and thus served as further proof that defendant was likely to be equally non-compliant with any conditions of release.

As to all the evidence the People presented at the hearing, the appellate court failed to acknowledge that evidence by way of proffer at pretrial detention hearings is expressly authorized in the Act. See 725 ILCS 5/110-6.1(f)(2), (5); and *People v. Whitaker*, 2024 IL App (1st) 232009, ¶ 55 ("[t]he State or defendant may present evidence at the hearing by way of proffer based upon reliable information," and "[t]he rules concerning the admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing," specifically permitting acceptable evidence to include hearsay, and proffers based on reliable information.)

This was not a trial, and the rules of admissibility for criminal trials did not apply at defendant's pretrial detention hearing. The State specifically proffered that defendant disregarded his training as a police officer, as well as provided a report from an independent expert in the use of lethal force. R 7-8. The expert report went over the training and de-escalation techniques taught to police officers. ES 6-14. The report ultimately concluded that defendant escalated the situation by moving closer to Ms. Massey and placing himself in danger, and that the shooting of Ms. Massey was not justified. ES 14. Moreover, it is worth mentioning, and common-sense dictates, that no police department in the world would find that defendant's action of shooting an unarmed submissive person in the head did *not* violate the department's policies. The appellate court's failure to even acknowledge the State's proffer, let alone show why said proffer was not reliable, was error.

In sum, the circuit court properly considered defendant's failure to comply with his training and obligations as a law enforcement officer as proof that defendant was likely to similarly fail to comply with any conditions of pretrial release, making such conditions insufficient to mitigate his risk. Indeed, the People argued at the hearing on defendant's motion for relief that defendant "simply not being a police officer is insufficient to protect the community." R 33. The circuit court agreed, explaining that:

> Evidence shows [defendant] didn't comply with his oath as an officer, he didn't comply with body camera requirements, and directed other officers to potentially not comply with their oaths as well. *This is not mitigated by not being an officer*. That is evidence that he does not comply with conditions of being an officer, *it is evidence that he doesn't comply with conditions*. The Court is unsatisfied that he would comply with conditions of home confinement or simply stating that he is going to turn over all his weapons.

R. 37-38 (emphasis added). The appellate court ignored this finding by the circuit court that it is not defendant's status as a law enforcement officer, but the fact that he flagrantly disregarded his obligations and training that provides clear and convincing evidence

supporting the finding that defendant was unlikely to comply with any conditions of release.

Lastly, at the hearing on the motion for relief, the circuit court explicitly considered and rejected defendant's argument that conditions of release, including home confinement with GPS monitoring and removing firearms from defendant's home, would be sufficient to mitigate his dangerousness. C 46-48. The People filed a detailed response brief, outlining why electronic monitoring, home confinement, and other conditions of pretrial release were insufficient to mitigate his dangerousness. C. 87-92. The circuit court agreed with the response brief, finding that although electronic monitoring may detect a failure to comply with conditions, "it's not adequate to mitigate the threat." R 37. Similarly, the court found, home confinement and turning in weapons were insufficient because the court "does not have confidence he could comply with conditions." R 37-38. The court reasoned that the body camera footage displayed defendant's "impulsiveness" because only a brief amount of time passed between defendant drawing his weapon and firing it, all while being recorded by his fellow deputy's body camera. R 37. Nor was the court swayed by the risk assessment, given that defendant would have received a score of 5 had defendant's two prior DUI charges been considered. R 39. The appellate court improperly substituted its discretion for that of the circuit court in determining that conditions of pretrial release were appropriate. Accordingly, this Court should reverse the appellate court's judgment and reinstate the circuit court's detention order.

CONCLUSION

For these reasons, the People of the State of Illinois respectfully request that this Court allow leave to appeal.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

Dated: December 4, 2024 By: /s/ David J. Robinson

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CERTIFICATE OF COMPLIANCE

I, Luke McNeill, certify that this petition for leave to appeal conforms to the requirements of Supreme Court Rules 315(d) and 341(a). The length of this petition, excluding the pages containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, and those matters appended to the petition under Rule 315(c) is 19 pages.

/s/ Luke McNeill
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THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 604(h)

No. _____

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS *Plaintiff-Petitioner,* v. SEAN P. GRAYSON, *Defendant-Respondent.*	)	On Petition for Leave to Appeal from the Appellate Court of Illinois, Fourth District No. 4-24-1100 There heard on Appeal from the Circuit Court of Sangamon County No. 2024-CF-909 Honorable Ryan Cadagin, Judge, Presiding.

NOTICE AND PROOF OF SERVICE

TO: Carolyn R. Klarquist, Director
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Under the penalties provided in law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that this Petition for Leave to Appeal is being electronically filed on December 4, 2024, and one copy of same is being served upon defendant's attorney of record via electronic mail on this date.

/s/ David J. Robinson
David J. Robinson, Chief Deputy Director
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APPENDIX

2024 IL App (4th) 241100-U

NO. 4-24-1100

FILED
November 27, 2024
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
SEAN GRAYSON,	)	No. 24CF909
Defendant-Appellant.	)	
	)	Honorable
	)	Ryan M. Cadagin,
	)	Judge Presiding.

JUSTICE DOHERTY delivered the judgment of the court.
Justices Knecht and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court reversed the trial court's pretrial detention order and remanded for a hearing on conditions of pretrial release because the State failed to introduce clear and convincing evidence that no combination of conditions would mitigate any danger defendant posed to the community.

¶ 2 Law enforcement officers are entrusted with the responsibility of responding to dangerous situations for the protection of the public. Defendant Sean Grayson, a former Sangamon County sheriff's deputy, is alleged to have violated his duties in the gravest manner: he is alleged to have shot and murdered Sonya Massey during a visit to her home in response to a 911 call reporting that there was a prowler in her neighborhood. Whether defendant is guilty of these offenses and, if so, what punishment he will receive are questions that have not yet been resolved. The issue before the court is not defendant's guilt or innocence but whether he should be detained

prior to trial. Specifically, the question is whether the trial court erred in finding that the State proved by clear and convincing evidence that defendant "pose[s] a threat to the safety of individuals or to the community which no condition of release can dispel." *United States v. Salerno*, 481 U.S. 739, 755 (1987). The trial court found that the State met its burden of proof; we hold that the court's finding was unsustainable on the evidence the State supplied. Accordingly, we reverse the court's detention order and remand for a hearing on conditions of pretrial release.

¶ 3 I. BACKGROUND

¶ 4 A. Pretrial Detention

¶ 5 The fundamental premise underlying pretrial detention based on the defendant's likelihood of future dangerousness is that it does not constitute punishment before trial. *Id.* at 746; see *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979) ("Due process requires that a pretrial detainee not be punished."). Therefore, this severe restriction on the defendant's liberty must be justified not by the government's interest in *punishing* crime but by its interest in *preventing* crime by individuals the State can prove are dangerous. See *Salerno*, 481 U.S. at 749.

¶ 6 B. Illinois Statutory Provisions

¶ 7 In Illinois, pretrial release is governed by article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/art. 110 (West 2022)), as amended by Public Act 101-652 (eff. Jan. 1, 2023), commonly known as the Pretrial Fairness Act (Act). See *Rowe v. Raoul*, 2023 IL 129248, ¶ 52 (lifting the stay of the Act's pretrial release provisions and setting their effective date as September 18, 2023). The Code provides that every defendant is eligible for pretrial release and presumed to be entitled to release on conditions imposed by the trial court, irrespective of the seriousness or the nature of the offense. 725 ILCS 5/110-2(a) (West 2022). The Code allows for the State to file a verified petition for a denial of pretrial release on the basis of either

dangerousness or flight risk. *Id.* § 110-6.1(a). In this case, the State has not alleged that defendant poses a flight risk, so we are concerned only with the dangerousness prong of the analysis.

¶ 8 To detain a defendant on the basis of dangerousness, the trial court must find that the State has proven the following three elements: (1) "the proof is evident or the presumption great that the defendant has committed an offense" in a specific list of detention-eligible offenses, (2) "the defendant poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case," and (3) "no condition or combination of conditions [of release] *** can mitigate *** the real and present threat to the safety of any person or persons or the community." *Id.* § 110-6.1(e)(1)-(3). Those conditions ordinarily include a requirement that the defendant "surrender all firearms in his or her possession to a law enforcement officer designated by the court" and may include home confinement with electronic location monitoring. *Id.* § 110-10(a)(5), (b)(5). The Code lists a number of specific conditions that the court may impose along with any "other reasonable conditions." *Id.* § 110-10(b). Although the Code provides nonexhaustive lists of factors for the trial court to consider (*id.* §§ 110-5(a), 110-6.1(g)), it emphasizes that "[d]ecisions regarding release, conditions of release, and detention prior to trial must be individualized, and no single factor or standard may be used exclusively to order detention" (*id.* § 110-6.1(f)(7)).

¶ 9 The trial court makes its findings after conducting a detention hearing, at which the State and the defendant may present evidence on all three elements, including evidence "by way of proffer based upon reliable information." *Id.* § 110-6.1(f)(2). Those findings must be supported by clear and convincing evidence, which is defined as evidence that "produces the firm and abiding belief that it is highly probable that the proposition on which the [State] has the burden of proof is true." Illinois Pattern Jury Instructions, Criminal, No. 4.19 (approved July 28, 2023); see *Enbridge*

Energy (Illinois), L.L.C. v. Kuerth, 2016 IL App (4th) 150519, ¶ 134 (noting that this standard does "not quite approach[ ] the criminal standard of proof beyond a reasonable doubt").

¶ 10 If the trial court finds that the State has failed to meet its burden of proof, the court must deny the State's petition and impose "the least restrictive conditions or combination of conditions necessary to reasonably ensure *** the safety of any other person or persons or the community." 725 ILCS 5/110-5(c) (West 2022). The State may file a second petition within 21 calendar days after the defendant is released (*id.* § 110-6.1(c)(1)), but "the State shall be required to present a verified application setting forth in detail any new facts not known or obtainable at the time of the filing of the previous petition" (*id.* § 110-6.1(d)(2)). Furthermore, "the defendant if previously released shall not be detained." *Id.* § 110-6.1(c)(1).

¶ 11 C. The Detention Hearing

¶ 12 On July 17, 2024, defendant was indicted for first degree murder (720 ILCS 5/9-1(a)(1), (2) (West 2022)), aggravated battery with a firearm (*id.* § 12-3.05(e)(1)), and official misconduct (*id.* § 33-3(a)(2)); all counts rested on the allegation that defendant, without lawful justification, discharged a firearm, striking Sonya Massey and causing her death.

¶ 13 On July 18, 2024, the State filed a verified petition to deny defendant pretrial release, and the trial court held a detention hearing. Defendant stipulated that the State had satisfied the first element based on the first degree murder charge. See 725 ILCS 5/110-6.1(a)(1.5) (West 2022) (providing that first degree murder is a detention-eligible offense). Because our holding addresses only the sufficiency of possible conditions of release to mitigate any danger defendant may pose, we will address the question of justification as it pertains only to the second and third elements. See *People v. Romine*, 2024 IL App (4th) 240321, ¶¶ 14-15 (noting that lack of justification potentially implicates the first element, as well as the second and third elements).

¶ 14 1. *Evidence at the Detention Hearing*

¶ 15 Prior to the detention hearing, the trial court reviewed "the recordings of body worn camera[s] depicting the events" and "a Use of Force Report from the Illinois State Police (ISP Report)" documenting the relevant events based on the body camera videos and reports submitted by the deputies. Pursuant to an agreed protective order, these materials were impounded—meaning sealed from public view. In addition to these materials, the court considered proffers by the attorneys for defendant and the State. The question in this case is whether the court's decision to grant the State's petition was reasonable based on this evidence. We note as well that the ultimate determination as to the truth of the allegations against defendant will be made based on the evidence admitted at his eventual trial.

¶ 16 a. The Shooting

¶ 17 On July 6, 2024, at approximately 12:50 a.m., defendant and another Sangamon County sheriff's deputy were dispatched to Massey's home in response to her 911 call, in which she had reported that there was a prowler in her neighborhood. When the deputies arrived, they began searching around Massey's home for a prowler. Both deputies were wearing body cameras, but defendant's body camera was turned off. It is unclear whether the other deputy turned on his body camera immediately upon arrival, but the video in the record begins with the deputies entering Massey's backyard.

¶ 18 After several minutes of searching, the deputies did not find anyone, but they did notice that the car in Massey's driveway had two broken windows. The deputies knocked on the front door of the house, and Massey opened the door approximately four minutes later, apparently distraught and not thinking clearly. Massey had a slight build; defendant is approximately a foot

taller and significantly heavier. Defendant was armed with his service weapon, a 9-millimeter handgun.

¶ 19 After the deputies explained to Massey that they had not found anyone, defendant asked her, "Are you doing alright mentally?" Defendant asked her questions about the car in her driveway, which she said was not hers. The deputies followed her into her living room, where they attempted to obtain identification and asked about the damage to the car.

¶ 20 A row of floor cabinets approximately three feet high separated Massey's living room from her kitchen. In the kitchen, a pot of water was sitting on a gas stove. Having noticed that the gas burner was on, defendant gestured toward the stove and said, "We don't need a fire while we're here." Massey walked over, turned off the gas burner, carried the pot to the nearby sink, and turned on the faucet. The deputies both backed away into the living room. When Massey asked why, defendant responded that they were getting away from the hot, steaming water.

¶ 21 Massey twice said, "I rebuke you in the name of Jesus." In response, defendant said, "You better f*** not. I swear to God, I'll f*** shoot you right in your f*** face." Defendant then drew his service weapon and pointed it at Massey, repeatedly shouting, "Drop the f*** pot!" Massey said, "Okay, I'm sorry."

¶ 22 The subsequent events are not entirely visible in the body camera videos, but the ISP Report describes those events as follows:

> "Mrs. Massey flinched, let go of the pot, and then crouched below the line of the cabinets. [Defendant] continued to instruct Mrs. Massey to drop the pot as he approached Mrs. Massey with his service weapon still pointed in her direction. Mrs. Massey quickly stood up and grabbed the pot. As [defendant] continued to instruct Mrs. Massey to drop the pot and approached the cabinets, Mrs. Massey

> threw the steaming hot water from the pot. While Mrs. Massey was throwing the water, [defendant] fired his weapon in the direction of Mrs. Massey. The water appeared to strike a chair next to the cabinets."

Defendant fired three times; one of the bullets struck Massey just below her left eye. She collapsed to the ground, lying on her left side, with the left side of her head against the floor.

¶ 23 Defendant reported the shooting to the police dispatch center and asked them to send emergency medical services (EMS). At that point, defendant activated his body camera, which made two beeps and began recording audio as well as video. We note that defendant's body camera video in the record begins exactly 30 seconds earlier, shortly before he drew his gun. However, the first 30-second portion of the video features no audio (as is the case with the other officer's video), possibly because it constituted "pre-event recording." See 50 ILCS 706/10-20(a)(1) (West 2022) (providing that body cameras generally "must be equipped with pre-event recording, capable of recording at least the 30 seconds prior to camera activation"). In response to defendant's action, the other deputy stated, "I was on, I was on," presumably referring to his own body camera, which had been activated earlier.

¶ 24 The other deputy said, "I'm going to go get my kit," presumably referring to a medical kit. Defendant responded, "You can go get it, but that was a headshot." Approximately 1 minute and 15 seconds later, defendant went to get the "med kit," saying "there's not much we can do." The other deputy said, "[W]e can at least try and hold the—stop the blood."

¶ 25 The other deputy took a dish towel from Massey's kitchen and held it against the bullet wound. Approximately 2 minutes and 20 seconds later, the other deputy asked defendant, "Do you still want me holding this pressure?" Defendant answered, "Yeah, EMS is coming." The other deputy continued to hold Massey's head and apply pressure to the wound for another four

minutes until EMS arrived. Despite these efforts, Massey ultimately died from the wound. During this time frame, defendant's body camera video shows him referring to Massey as a "f*** b***" and describing her as "crazy." Although defendant did retrieve a red duffel bag from the deputies' vehicle—presumably the medical kit he had gone to retrieve—neither deputy opened the kit nor used its contents to render aid to Massey.

¶ 26 On July 15, 2024, the Illinois State Police issued the ISP Report opining whether defendant's conduct was justified under the circumstances, applying standards established by United States Supreme Court caselaw regarding excessive force, Illinois statutes governing the use of force by peace officers, and Integrated Communications, Assessment and Tactics (ICAT) Law Enforcement De-Escalation Training, which the ISP Report endorsed. However, the ISP Report did not address events after the shooting, including the medical aid that was provided to Massey.

¶ 27 The ISP Report—which we mention here because the trial court considered the opinions it expressed in making the decision to detain defendant—stated, in pertinent part, as follows:

> "It is unknown if the Sangamon County Sheriff's Office has mandated this [ICAT] training to their Deputies. From the videos reviewed, the only tactics utilized during this incident were [defendant's] statement right after Mrs. Massey stated 'I rebuke you in the name of Jesus.' [Defendant] stated 'You better not. I will shoot you right in your [f***] face, Drop the pot.', drew his service weapon, and pointed it at Mrs. Massey."

¶ 28 The ISP Report concluded as follows:

> "After a careful review of the incident and weighing the incident against [*Graham v. Connor*, 490 U.S. 386 (1989)], Illinois Compiled Statutes, and ICAT

> De-escalation training, the Officer Survival Section finds [the deputies] were justified in pointing their service weapons at Mrs. Massey in an attempt to gain compliance. [Defendant's] advancement and removing himself from the limited cover from Mrs. Massey and the distance the liquid could have been thrown, placed himself within a distance where he could have been injured. This is similar to an officer stepping in front of a moving vehicle and fearing for their safety. Because of [defendant's] advancement, [defendant] had no other option but to fire his duty weapon. Because [defendant] placed himself in danger of great bodily harm, the Officer Survival Section does not feel the shooting of Mrs. Massey [wa]s justified."

¶ 29 b. Defendant's Background and Proposed Conditions of Release

¶ 30 The State did not introduce any evidence as to whether defendant had a criminal history. Defendant's attorney proffered the following information about his background:

> "You have before you a 30-year-old Defendant. He has owned his own home for the last four years. He lives there with his fiancée. They are set to be married in October.
>
> [Defendant] graduated from North Mac in 2013 at which time he enrolled in the Army and was in the Army for three years before he was honorably discharged as a Private First Class.
>
> His law enforcement career includes a year of service to Virden and Pawnee, another year of service to the community of Auburn, a year at the Logan County Sheriff's Department, and currently one-and-a-half years at the Sangamon County Sheriff's Office. That service ended yesterday [(July 17, 2024)] when Sheriff Campbell terminated him."

Defendant voluntarily surrendered himself to the Sangamon County jail less than a half hour after he was notified that he had been indicted in this case.

¶ 31 Defendant's attorney proposed release on the following conditions:

> "That combination of conditions would be shall not possess any firearm or other dangerous weapons. Those have already been removed from his home. Shall not use any intoxicating or controlled substances, shall refrain from the use of alcohol, shall undergo a mental health evaluation and complete all treatment, sign any necessary releases so the pretrial services can confirm his compliance, and, lastly, submit to 24-hour seven-day a week electronic monitoring."

¶ 32 At the hearing, there was no discussion of the pretrial risk assessment that had been performed on defendant. Though the risk assessment scoresheet is not contained in the record, a later discussion between defense counsel and the trial court suggests that defendant received a score of 3 on a scale of 14 solely because the risk assessment provides that a felony charge is worth 3 points. According to the manual for interpreting the risk assessment, which is in the record, this score placed defendant in the second-lowest of six risk categories.

¶ 33 2. *The Trial Court's Findings*

¶ 34 At the conclusion of the hearing, the trial court found that the State had met its burden of proof, granted the State's petition, and ordered defendant detained pending trial. The court summarized its findings on the second and third elements in a form detention order, shown here with the statutory factors in italics and the court's findings in ordinary type:

> "*Nature and circumstances of the offense(s) charged.* Defendant was a sworn officer with training and was accompanied by another officer. Defendant was aware or should have been aware he was being video recorded. Despite these

> safeguards and supervision from law enforcement, the Defendant still discharged his firearm against an unarmed woman. He was in violation of his oath as a sworn officer, which is evidence he is not a good candidate to be in compliance with his conditions. He directed law enforcement not to render aid, which is counter to basic norms of public safety. Defendant was not using his body camera until after the shooting. Not being in compliance with body camera requirements is further evidence that points to him not being able to comply with conditions. Defendant's characterizations of the victim after the shooting, as contained in the video in People's [Exhibit] A, are such a departure from the basic expectations of civil society that they are evidence of the Defendant's dangerousness and also that he could not comply with conditions.
>
> * * *
>
> *The age and/or physical conditions of any victim of complaining witness.* The victim was a slight woman who weighed 110 lbs and was not a physical threat to the Defendant.
>
> *Defendant is known to possess or have access to weapons.* A firearm was used in this case." (Emphases added.)

See 725 ILCS 5/110-6.1(g)(1), (6)-(7) (West 2022) (identifying these as factors for the court to consider).

¶ 35 D. The Follow-Up Hearing

¶ 36 Pursuant to Illinois Supreme Court Rule 604(h)(2) (eff. Apr. 15, 2024), defendant filed a motion with the trial court seeking relief from its order denying him pretrial release, arguing

that the court's findings on the third element were erroneous. The court denied the motion, reiterating its prior findings as follows:

> "Electronic monitoring is insufficient. Electronic monitoring may detect a failure to comply with conditions, but it's not adequate to mitigate the threat.
>
> In the video the impulsiveness of the defendant as demonstrated by the amount of time that passes from the gun being drawn to him firing the gun, electronic monitoring does nothing to mitigate that threat. The police officer standing right next to him and recording him could not mitigate that threat. Also, home confinement and turning in weapons are insufficient because the Court does not have confidence he could comply with conditions.
>
> Evidence shows he didn't comply with his oath as an officer, he didn't comply with body camera requirements, and directed other officers to potentially not comply with their oaths as well. That is not mitigated by not being an officer. That is evidence that he does not comply with conditions of being an officer, it is evidence that he doesn't comply with conditions. The Court is unsatisfied that he would comply with conditions of home confinement or simply stating that he is going to turn over all his weapons."

¶ 37 For the first time, the trial court addressed defendant's relatively low score on the risk assessment, though it noted that his score would have been two points higher (*i.e.*, 5 out of 14) if two prior misdemeanor charges for driving under the influence had been factored into the risk assessment.

¶ 38 This appeal followed.

¶ 39 II. ANALYSIS

¶ 40 Defendant has elected to have his motion for relief to serve as his argument on appeal. See Ill. S. Ct. R. 604(h)(7) (eff. Apr. 15, 2024). The State argues that defendant's motion is deficient in several respects and that it "simply raises factual issues that the trial court resolved in favor of the State." The State's argument on this point is not well taken; defendant's motion contains sufficient detail to enable meaningful appellate review (see *id.*), and that review extends to his allegations that the court's factual findings were erroneous (see *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001) ("[A]lthough determinations by the trier of fact are entitled to great deference, they are not conclusive.")).

¶ 41 A. Standard of Review

¶ 42 Definitive guidance from the supreme court on the appropriate standard of review is likely forthcoming, but we have explained at length why we review the trial court's decisions regarding pretrial release for an abuse of discretion. See generally *People v. Morgan*, 2024 IL App (4th) 240103, *argued*, No. 130626 (Ill. Sept. 12, 2024). " 'An abuse of discretion occurs when the [trial] court's decision is "arbitrary, fanciful or unreasonable," or where "no reasonable person would agree with the position adopted by the [trial] court." ' " *People v. Inman*, 2023 IL App (4th) 230864, ¶ 10 (quoting *People v. Simmons*, 2019 IL App (1st) 191253, ¶ 9, quoting *People v. Becker*, 239 Ill. 2d 215, 234 (2010)). "Although abuse-of-discretion review is the most deferential standard of review available," it does not constitute "mere rubber-stamping." *Paul v. Gerald Adelman & Associates, Ltd.*, 223 Ill. 2d 85, 99 (2006). In the present case, we find that reversal is appropriate even under this deferential standard of review, so it would also be appropriate under any more exacting standard.

¶ 43 Defendant argues that the trial court erred by finding that conditions of release, including not working as a law enforcement officer, home confinement, electronic location

monitoring, and the removal of firearms from his home, would be inadequate to mitigate the threat he posed to the safety of the community. See 725 ILCS 5/110-10(a)(5), (b)(5) (West 2022). Defendant does not directly challenge the court's finding that he poses a real and present threat to the safety of the community but that finding must still factor into our analysis because "dangerousness and conditions of release are two sides of the same coin; the nature and severity of the threat necessarily determine the nature and severity of the conditions that could—or could not—mitigate the threat." *Romine*, 2024 IL App (4th) 240321, ¶ 16; see *People v. Thomas*, 2024 IL App (4th) 240248, ¶ 26 ("[A]ny condition of release must be appropriately measured to meet the danger presented in each case.").

¶ 44 B. Findings Not Supported by Evidence

¶ 45 " '[F]or a reviewing court to determine whether the trial court abused its discretion, it must undertake a review of the relevant evidence.' " *Morgan*, 2024 IL App (4th) 240103, ¶ 35 (quoting *People v. McDonald*, 2016 IL 118882, ¶ 32). Our review of the evidence here fails to turn up support for several of the trial court's findings; as such, the court's conclusion that the State supplied clear and convincing evidence to support these findings is necessarily unreasonable.

¶ 46 1. *Defendant's Training*

¶ 47 Although the trial court emphasized that defendant was a trained officer who "ha[d] gone through personally hours of training," there is no evidence in the record concerning defendant's training or how it was violated. More importantly, the question before the trial court was whether there were adequate conditions to guard against any danger defendant would pose if he were released pending trial. Defendant's training may be an important issue at the eventual trial of the charges against him, but it bears little on this question.

¶ 48 2. *Defendant's Oath*

¶ 49 The trial court emphasized that defendant violated his oath as a sworn officer. Irrespective of what obligations bound defendant while he was a sworn officer, however, the evidence showed that at the time of the hearing, defendant was no longer a law enforcement officer subject to any oath; there was no way, then, that he could violate those obligations again if released. Imposing pretrial detention solely for a past infraction when a similar infraction would be impossible on pretrial release crosses the line from permissible regulation of pretrial release to impermissible punishment.

¶ 50 3. *"Basic Norms of Public Safety"*

¶ 51 In its detention order, the trial court found that defendant "directed law enforcement not to render aid, which is counter to basic norms of public safety." The record does show that the officers discussed whether any aid they could render with the medical kit would be futile in light of Massey's severe injury, but they also summoned EMS to provide aid, and defendant still retrieved the medical kit. But again, these matters do not reasonably bear on whether adequate release conditions could be fashioned to mitigate any danger defendant poses as a private citizen, not as a law enforcement officer. On pretrial release, defendant will not be able to issue directives to other law enforcement officers or fall short in providing assistance when acting in a law enforcement role.

¶ 52 4. *Body Camera Requirements*

¶ 53 The trial court found that defendant failed to comply with statutory body camera requirements by activating the video immediately before the shooting and the audio immediately after the shooting. Presumably, the court was attempting to analogize defendant's compliance with body camera regulations and his possible future compliance with GPS monitoring if ordered by the court. This is a strained connection; if defendant is fitted with a GPS monitoring device, it will

not be up to him to activate it. See 730 ILCS 5/5-8A-4.15(b) (West 2022) (subjecting defendants on pretrial release to criminal penalties when they deactivate electronic monitoring devices). Therefore, this analogy provides little support for the court's conclusion that pretrial release conditions would be inadequate.

¶ 54 5. *"Supervision From Law Enforcement"*

¶ 55 The trial court described the other deputy's accompanying of defendant as "supervision from law enforcement." However, there is no indication that the other deputy had a supervisory role over defendant; indeed, the court seems to have believed that the opposite was true, faulting *defendant* for directing the *other deputy* not to render aid to Massey.

¶ 56 C. The Trial Court's Conclusions

¶ 57 To recap, the State introduced no evidence, much less clear and convincing evidence, of (1) the training that defendant is alleged to have clearly disregarded, (2) the provisions of the oath that defendant is alleged to have violated, or (3) the Sangamon County Sheriff's Office's policies that defendant is alleged to have deliberately disobeyed. Nevertheless, the trial court found clear and convincing evidence that defendant's unspecified noncompliance, together with his impulsiveness and disparagement of Massey, were such a "departure from the basic expectations of civil society" that no conditions of release would be adequate to mitigate the threat he posed to the safety of the community.

¶ 58 The trial court apparently drew this language from our decision in *Romine*, 2024 IL App (4th) 240321, ¶ 20, which defendant discussed at the detention hearing. There, we addressed the question of whether pretrial detention can be justified on dangerousness grounds for a first-time offender charged with a crime of violence. *Id.* ¶ 16. The allegations in *Romine* were that the defendant shot his mother, abandoned her body, falsely told the police that she was alive

and well, tried to destroy his cell phone, tried to elude the police by running red lights, threw a loaded AR-style rifle out of his car window, tried to ingest a large number of pills, and told the police that his mother had likely been killed by an attempted robber named "John." *Id.* ¶¶ 5-7. At the detention hearing, however, the defendant acknowledged that he did kill his mother but asserted that his use of force was justified, *i.e.*, that he acted in self-defense. *Id.* ¶ 13 (citing 720 ILCS 5/7-1(a) (West 2022)). In affirming the trial court's order on dangerousness grounds, we concluded that even charged conduct alone "may reflect such a departure from the basic expectations of civil society that it becomes difficult to predict the defendant's compliance with court orders." *Id.* ¶ 20.

¶ 59 We find *Romine* offers little support for the trial court's ruling here. Defendant is alleged to have breached his responsibilities as a police officer with terrible consequences; unlike in *Romine*, where the defendant's conduct extended over multiple days, the case on the merits against defendant here is focused on whether his reaction to a momentary situation was criminal. Thus, this case arises purely out of defendant's law enforcement role, but that circumstance no longer exists now that he has been discharged. See *People v. Russell*, 2023 IL App (4th) 230918-U, ¶ 18 (reversing a detention order for a defendant charged with causing the death of a child because conditions of release could prevent her from caring for another child and therefore "mitigate the general alleged threat to the community"). When the question before the court is whether defendant can be safely released prior to trial on appropriate conditions, it is inappropriate to dwell on whether he fell short of the high expectations society rightly has for its law enforcement officers. A defendant's conduct may be reprehensible and deserving of punishment, but that is an inappropriate basis for imposing pretrial detention. See *People v. Atterberry*, 2023 IL App (4th)

231028, ¶ 18 ("[T]he fact that a person is charged with a detainable offense is not enough to order detention, nor is it enough that the defendant poses a threat to public safety.").

¶ 60 D. Remand

¶ 61 1. *Conditions of Release*

¶ 62 In previous appeals where the trial court's explanation behind its detention order was insufficient, we have vacated the detention order and remanded for a new detention hearing, at which the court could properly explain its decision. See, *e.g.*, *Atterberry*, 2023 IL App (4th) 231028, ¶ 21. Our reason is that the State should not be held responsible for the court's error when the State supplied sufficient evidence at the first detention hearing. Here, however, the State failed to supply sufficient evidence, so we hold the State responsible by reversing the court's detention order outright and placing the parties in the same position they would have been had the court properly denied the State's petition and proceeded to a hearing on conditions of release. Although our order has addressed only the conditions of release addressed at the detention hearing, we express no opinion as to what conditions of release may be appropriate on remand.

¶ 63 2. *The Protective Order*

¶ 64 As noted above, the materials the trial court considered at the detention hearing were impounded. When adopting the parties' agreed protective order, the court failed to explain its reasoning for sealing these materials from public view. We recently cautioned that this practice is improper:

> "[T]he public has a presumptive right of access to [court] records. *In re Marriage of Johnson*, 232 Ill. App. 3d 1068, 1074-75 (1992) ('The file of a court case is a public record to which the people and the press have a right of access. *** Once documents are subject to the right of access, only a compelling reason,

> accompanied by specific factual findings, can justify keeping them from public view.'). The record on appeal does not disclose why the records were sealed, so we presume the trial court acted within its discretion in sealing them. See *Skolnick v. Altheimer & Gray*, 191 Ill. 2d 214, 231 (2000) (noting that the decision to seal court records is discretionary); *Bicek v. Quitter*, 38 Ill. App. 3d 1027, 1030 (1976) ('It is well settled that there is no presumption of abuse of discretion by a trial court ***.')." *Schultz v. Sinav Ltd.*, 2024 IL App (4th) 230366, ¶ 150.

The remedy we ordered in *Schultz* is appropriate here as well:

> "[T]he trial court on remand must revisit whether the party or parties seeking to seal these documents have met the heavy burden necessary to warrant the continued restriction on public access; absent such a showing, the documents must be unsealed. See *Skolnick*, 191 Ill. 2d 214 (explaining what the party opposing public access must show); see also *Marriage of Johnson*, 232 Ill. App. 3d at 1075 ('The parties' desire and agreement that the court records were to be sealed falls far short of outweighing the public's right of access to the files.'). The parties' agreement on sealing cannot be the end of the trial court's scrutiny because the strong presumption in favor of open access cannot be so easily overcome. The court must satisfy itself that it has a proper basis for sealing and that the extent of the sealing goes no further than is necessary to serve the interest which justifies it, regardless of what the parties may agree to." *Id.* ¶ 151.

¶ 65 In the meantime, the exhibits impounded by the trial court "shall remain as such when filed in the reviewing courts" (Ill. S. Ct. R. 371 (eff. June 11, 2021)), and the name of the Sangamon County sheriff's deputy who accompanied defendant to Massey's house appears only

in the impounded record. Our choice to avoid using his name in this order does not constitute a finding that his name should be withheld from public view; it means only that the trial court should be given the first opportunity to make the necessary factual findings. *Johnson*, 232 Ill. App. 3d at 1074-75; see *Simmons v. Union Electric Co.*, 104 Ill. 2d 444, 463 (1984) (explaining that reviewing courts are not fact-finding tribunals).

¶ 66 III. CONCLUSION

¶ 67 We ask members of law enforcement to go into sometimes tense situations, but we do so with the expectation that they will conduct themselves in a way that makes our communities safer, not more dangerous. Whether defendant fell below these expectations to the point of criminality is a matter which will eventually be decided on the merits of this case. In considering whether defendant poses a danger justifying his pretrial detention in the interim, however, the question is not whether he will meet the high expectations of a law enforcement officer; the question is whether, as a private citizen, he poses a danger to the public that cannot be mitigated by appropriate conditions of pretrial release. The trial court's focus on defendant's failings as a law enforcement officer, while understandable, distracted from the central question of how to address any risk he posed after being stripped of his office.

¶ 68 For the reasons stated, we reverse the trial court's detention order and remand with directions for the court to promptly (1) set the case for a hearing to determine the least restrictive conditions of defendant's pretrial release pursuant to section 110-5 of the Code (725 ILCS 5/110-5) (West 2022)) and (2) revisit whether the party or parties seeking to impound the exhibits considered at the detention hearing have met the heavy burden necessary to warrant the continued restriction on public access to those exhibits.

¶ 69 Reversed and remanded with directions.